IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: C/251 to 254/2010

[Arising out of Order-in-Appeal No: 671 to 675(GR.IV)/2009/(JNCH)/IMP-287 to 291 (w.e.f. 01.07.2009.) dated 20th November 2009 passed by the Commissioner of Customs (Appeals), Mumbai-II.]

For approval and signature:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Dr Suvendu Kumar Pati, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	Yes
2.	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3.	Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	:	Yes

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Hitachi Home and Life Solution (India) Ltd … ***Appellant***

versus

Commissioner of Customs (Import)
Nhava Sheva …***Respondent***

Appearance:

Shri SJ Vyas, Advocate for appellant

Shri Roopam Kapoor, Principal Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Dr Suvendu Kumar Pati, Member (Judicial)

Date of hearing:	**25/01/2019**
Date of decision:	**25/01/2019**

ORDER NO: A/ 85224-85227/2019

Per: C J Mathew

These appeals lie against order-in-appeal no. 671 to 675 (GR.IV)/2009/(JNCH)/IMP-287 to 291 (w.e.f. 01.07.2009.) dated 20th November 2009 of Commissioner of Customs (Appeals), JNCH, Mumbai-II arising from the challenge to the levy of provisional safeguard duty under notification no. 26/2009-Cus dated 23rd March 2009 in the assessment of five bills of entry for import of 'aluminium finstock' from China. The first appellate authority held that as the safeguard duty imposed provisionally had since been made final by notification no. 71/2009-Cus dated 19th June 2009, all that remained was to compute the consequential safeguard duty with relief, if any, thereon not to be withheld.

2. Having heard both sides and perused the records, we find that the sole plea before the first appellate authority was to keep the dispute alive to enable them to reap the consequences, if any, of writ petition pending in the Hon'ble High Court of Bombay. This is clear

from the ground of appeal that

> *'It is submitted that the appellant had filed protective appeal to keep alive its rights and contentions in pending writ petition before Mumbai High Court. The Writ petition filed by P.G.Foils in the High Court of Bombay on the same issue i.e., safeguard duty on import of alumunium flat rolled products/foils/fin stock has been granted stay. The amount of safeguard duty is standing in receivable accounts in our books of accounts. Since the Bill of Entry has been assessed finally, appellant has filed this protective appeal against bill of entry no. 849269 to keep our claim alive. We have filed declaration to Assistant Commissioner Customs, Jawahar Custom House, Nhava Sheva, Dubai. Copy is attached here with as Annexure C.'*

3. We find that the appellant has not sought relief on the evidence of non-applicability of the safeguard duty to their import but has attempted to use the judicial process for, what they, in their words, describe as 'protective appeal to keep alive its rights and contentions in pending writ petition'. This, according to us, is not a valid ground for entertaining these appeals.

4. Accordingly, we find no merit therein and dismiss the appeals.

(Pronounced in Court)

(Dr Suvendu Kumar Pati)
Member (Judicial)

(C J Mathew)
Member (Technical)

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